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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

HENRY EDWARD BLAIR,

Petitioner,

Civil No. 10-615-TC

v.

FINDINGS AND
RECOMMENDATION

STATE OF OREGON,

Respondent.

COFFIN, Magistrate Judge.

Petitioner filed a petition under 28 U.S.C, § 2254 challenging the Judgment from Harney County Circuit Court Case No. 030120CR, for petitioner's convictions for two counts of Rape in the First Degree and four counts of Sexual Abuse in the First Degree.

Respondent now moves to dismiss this proceeding on the ground that petitioner has not obtained permission from the Ninth Circuit Court of Appeals to file a second or successive petition as required by 28 U.S.C. § 2244(b)(3)(A).

The record reflects that on December 29, 2008, petitioner filed a petition for writ of habeas corpus in *Blair v. Booth*, U.S.D.C. Case No. 08-CV-01502-PA. Respondent's Exhibit 103. The petition in that proceeding challenges the same convictions that petitioner is challenging in this case. *Id.*

28 U.S.C. § 2244(b)(3)(A) requires petitioners to obtain permission of the Court of Appeals before filing a second or successive petition in the District Court. If a petitioner does not obtain the required certificate of authorization to file a second or successive petition, the District Court has no jurisdiction to consider the petition. Cooper v. Calderon, 274 F.3d 1270 (9th Cir. 2001).

Petitioner has not obtained the required certificate of authorization to proceed with a second petition concerning the conviction at issue in this proceeding. Accordingly, petitioner's Petition (#1) should be denied without prejudice. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file

objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28 U.S.C. § 2253(c)(2).

DATED this 18 day of November, 2011.



Thomas M. Coffin
United States Magistrate Judge